

Title 19 Chapter 6

ENVIRONMENTAL QUALITY CODE - HAZARDOUS SUBSTANCES

PART 1

SOLID AND HAZARDOUS WASTE ACT

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19-6-101. Short title.

This part is known as the "Solid and Hazardous Waste Act."

19-6-102. Definitions.

As used in this part:

- (1) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-1-106.
- (2) "Closure plan" means a plan under Section 19-6-108 to close a facility or site at which the owner or operator has disposed of nonhazardous solid waste or has treated, stored, or disposed of hazardous waste including, if applicable, a plan to provide postclosure care at the facility or site.
- (3) (a) "Commercial nonhazardous solid waste treatment, storage, or disposal facility" means a facility that receives, for profit, nonhazardous solid waste for treatment, storage, or disposal.
(b) "Commercial nonhazardous solid waste treatment, storage, or disposal facility" does not include a facility that:
 - (i) receives waste for recycling;
 - (ii) receives waste to be used as fuel, in compliance with federal and state requirements; or
 - (iii) is solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government.
- (4) "Construction waste or demolition waste":
 - (a) means waste from building materials, packaging, and rubble resulting from construction, demolition, remodeling, and repair of pavements, houses, commercial buildings, and other structures, and from road building and land clearing; and
 - (b) does not include: asbestos; contaminated soils or tanks resulting from remediation or cleanup at any release or spill; waste paints; solvents; sealers; adhesives; or similar hazardous or potentially hazardous materials.
- (5) "Demolition waste" has the same meaning as the definition of construction waste in this section.
- (6) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any land or water so that the waste or any constituent of the waste may enter the environment, be emitted into the air, or discharged into any waters, including groundwaters.
- (7) "Executive secretary" means the executive secretary of the board.
- (8) "Generation" or "generated" means the act or process of producing nonhazardous solid or hazardous waste.
- (9) "Hazardous waste" means a solid waste or combination of solid wastes other than household waste which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- (10) "Health facility" means hospitals, psychiatric hospitals, home health agencies, hospices, skilled nursing facilities, intermediate care facilities, intermediate care facilities for the mentally retarded, residential health care facilities, maternity homes or birthing centers, free standing ambulatory surgical centers, facilities owned or operated by health maintenance organizations, and state renal disease treatment centers including free standing hemodialysis units, the offices of private physicians and dentists whether for individual or private practice, veterinary clinics, and mortuaries.
- (11) "Household waste" means any waste material, including garbage, trash, and sanitary wastes in septic tanks, derived from households, including single-family and multiple-family residences, hotels and motels, bunk houses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.
- (12) "Infectious waste" means a solid waste that contains or may reasonably be expected to contain pathogens of sufficient virulence and quantity that exposure to the waste by a susceptible host could result in an infectious disease.
- (13) "Manifest" means the form used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.
- (14) "Mixed waste" means any material that is a hazardous waste as defined in this chapter and is also radioactive as defined in Section 19-3-102.
- (15) "Modification plan" means a plan under Section 19-6-108 to modify a facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste.
- (16) "Operation plan" or "nonhazardous solid or hazardous waste operation plan" means a plan or approval under Section 19-6-108, including:
 - (a) a plan to own, construct, or operate a facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste;
 - (b) a closure plan;
 - (c) a modification plan; or
 - (d) an approval that the executive secretary is authorized to issue.
- (17) "Permittee" means a person who is obligated under an operation plan.
- (18) (a) "Solid waste" means any garbage, refuse, sludge, including sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations and from community activities but does not include solid or dissolved materials in domestic sewage or in irrigation return flows or discharges for which a permit is required under Title 19, Chapter 5, Water Quality Act, or under the Water Pollution Control Act, 33 U.S.C., Section 1251, et seq.

(b) "Solid waste" does not include any of the following wastes unless the waste causes a public nuisance or public health hazard or is otherwise determined to be a hazardous waste:

(i) certain large volume wastes, such as inert construction debris used as fill material;
(ii) drilling muds, produced waters, and other wastes associated with the exploration, development, or production of oil, gas, or geothermal energy;

(iii) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(iv) solid wastes from the extraction, beneficiation, and processing of ores and minerals; or

(v) cement kiln dust.

(19) "Storage" means the actual or intended containment of solid or hazardous waste either on a temporary basis or for a period of years in such a manner as not to constitute disposal of the waste.

(20) "Transportation" means the off-site movement of solid or hazardous waste to any intermediate point or to any point of storage, treatment, or disposal.

(21) "Treatment" means a method, technique, or process designed to change the physical, chemical, or biological character or composition of any solid or hazardous waste so as to neutralize the waste or render the waste nonhazardous, safer for transport, amenable for recovery, amenable to storage, or reduced in volume. (22) "Underground storage tank" means a tank which is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C., Section 6991, et seq.

19-6-102.1. Treatment and disposal -- Exclusions.

As used in Subsections 19-6-104(1)(j)(ii)(B), 19-6-108(3)(b) and (3)(c)(ii)(B), and 19-6-119(1)(a), the term "treatment and disposal" specifically excludes the recycling, use, reuse, or reprocessing of fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; waste from the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust, including recycle, reuse, use, or reprocessing for road sanding, sand blasting, road construction, railway ballast, construction fill, aggregate, and other construction-related purposes.

19-6-102.6. Legislative participation in landfill siting disputes.

(1) (a) Upon the Legislature's receipt of a written request by a county governing body or a member of the Legislature whose district is involved in a landfill siting dispute, the president of the Senate and the speaker of the House shall appoint a committee as described under Subsection (2) and volunteers under Subsection (3) to actively seek an acceptable location for a municipal landfill if there is a dispute between two or more counties regarding the proposed site of a municipal landfill.

(b) The president and the speaker shall consult with the legislators appointed under this subsection regarding their appointment of members of the committee under Subsection (2), and volunteers under Subsection (3).

(2) The committee shall consist of the following members, appointed jointly by the president and the speaker:

(a) two members from the Senate:

(i) one member from the county where the proposed landfill site is located; and
(ii) one member from the other county involved in the dispute, but if more than one other county is involved, still only one senator from one of those counties;

(b) two members from the House:

(i) one member from the county where the proposed landfill site is located; and
(ii) one member from the other county involved in the dispute, but if more than one other county is involved, still only one representative from one of those counties;

(c) one individual whose current principal residence is within a community located within 20 miles of any exterior boundary of the proposed landfill site, but if no community is located within 20 miles of the community, then an individual whose current residence is in the community nearest the proposed landfill site;

(d) two resident citizens from the county where the proposed landfill site is located; and

(e) three resident citizens from the other county involved in the dispute, but if more than one other county is involved, still only three citizen representatives from those counties.

(3) Two volunteers shall be appointed under Subsection (1). The volunteers shall be individuals who agree to assist, as requested, the committee members who represent the interests of the county where the proposed landfill site is located.

(4) (a) Funding and staffing for the committee shall be provided jointly and equally by the Senate and the House.

(b) The Department of Environmental Quality shall, at the request of the committee and as funds are available within the department's existing budget, provide support in arranging for committee hearings to receive public input and secretarial staff to make a record of those hearings.

(5) The committee shall:

(a) appoint a chair from among its members;

(b) meet as necessary, but not less often than once per month, until its work is completed.

(6) The committee shall report in writing the results of its work and any recommendations it may have for legislative action to the interim committees of the Legislature as directed by the Legislative Management Committee.

(7) (a) All action by the division, the executive secretary, or the division board of the Department of Environmental Quality regarding any proposed municipal landfill site, regarding which a request has been submitted under Subsection (1), is tolled for one year from the date the request is submitted, or until the committee completes its work under this section, whichever

occurs first. This subsection also tolls the time limits imposed by Subsection 19-6-108(13).

(b) This subsection applies to any proposed landfill site regarding which the department has not granted final approval on or before March 21, 1995.

(c) As used in this subsection, "final approval" means final agency action taken after conclusion of proceedings under Sections 63-46b-9 through 63-46b-18.

(8) This section does not apply to a municipal solid waste facility that is, on or before March 23, 1994:

(a) operating under an existing permit or the renewal of an existing permit issued by the local health department or other authority granted by the Department of Environmental Quality; or

(b) operating under the approval of the local health department, regardless of whether a formal permit has been issued.

19-6-103. Solid and Hazardous Waste Control Board -- Members -- Terms -- Organization -- Meetings -- Per diem and expenses.

(1) The Solid and Hazardous Waste Control Board created by Section 19-1-106 comprises the executive director and 12 members appointed by the governor with the consent of the Senate.

(2) The appointed members shall be knowledgeable about solid and hazardous waste matters and consist of:

(a) one representative of municipal government;

(b) one representative of county government;

(c) one representative of the manufacturing or fuel industry;

(d) one representative of the mining industry;

(e) one representative of the private solid waste disposal or solid waste recovery industry;

(f) one registered professional engineer;

(g) one representative of a local health department;

(h) one representative of the hazardous waste disposal industry; and

(i) four representatives of the public, at least one of whom is a representative of organized environmental interests.

(3) Not more than six of the appointed members may be from the same political party.

(4) (a) Except as required by Subsection (4)(b), members shall be appointed for terms of four years each.

(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(5) Each member is eligible for reappointment.

(6) Board members shall continue in office until the expiration of their terms and until their successors are appointed, but not more than 90 days after the expiration of their terms.

(7) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term by the governor, after considering recommendations of the board and with the consent of the Senate.

(8) The board shall elect a chair and vice chair on or before April 1 of each year from its membership.

(9) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) Legislators on the committee shall receive compensation and expenses as provided by law and legislative rule.

(10) (a) The board shall hold a meeting at least once every three months including one meeting during each annual general session of the Legislature.

(b) Meetings shall be held on the call of the chair, the executive secretary, or any three of the members.

(11) Seven members constitute a quorum at any meeting, and the action of the majority of members present is the action of the board.

19-6-104. Powers of board -- Creation of statewide solid waste management plan.

(1) The board shall

(a) survey solid and hazardous waste generation and management practices within this state and, after public hearing and after providing opportunities for comment by local governmental entities, industry, and other interested persons, prepare and revise, as necessary, a waste management plan for the state;

(b) carry out inspections pursuant to Section 19-6-109;

(c) hold hearings and compel the attendance of witnesses, the production of documents, and other evidence, administer oaths and take testimony, and receive evidence it finds proper, or appoint hearing officers who shall be delegated these powers;

(d) issue orders necessary to effectuate the provisions of this part and implementing rules and enforce them by administrative and judicial proceedings, and cause the initiation of judicial proceedings to secure compliance with this part;

(e) settle or compromise any administrative or civil action initiated to compel compliance with this part and any rules

adopted under this part;

(f) require submittal of specifications or other information relating to hazardous waste plans for review, and approve, disapprove, revoke, or review the plans;

(g) advise, consult, cooperate with, and provide technical assistance to other agencies of the state and federal government, other states, interstate agencies, and affected groups, political subdivisions, industries, and other persons in carrying out the purposes of this part;

(h) promote the planning and application of resource recovery systems to prevent the unnecessary waste and depletion of natural resources;

(i) meet the requirements of federal law related to solid and hazardous wastes to insure that the solid and hazardous wastes program provided for in this part is qualified to assume primacy from the federal government in control over solid and hazardous waste;

(j) (i) require any facility, including those listed in Subsection (1)(j)(ii), that is intended for disposing of nonhazardous solid waste or wastes listed in Subsection (1)(j)(ii)(B) to submit plans, specifications, and other information required by the board to the board prior to construction, modification, installation, or establishment of a facility to allow the board to determine whether the proposed construction, modification, installation, or establishment of the facility will be in accordance with rules made under this part;

(ii) facilities referred to in Subsection (1)(j)(i) include:

(A) any incinerator that is intended for disposing of nonhazardous solid waste; and

(B) except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal, and with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust wastes; and

(k) exercise all other incidental powers necessary to carry out the purposes of this part.

(2) (a) The board shall establish a comprehensive statewide solid waste management plan by January 1, 1994.

(b) The plan shall:

(i) incorporate the solid waste management plans submitted by the counties;

(ii) provide an estimate of solid waste capacity needed in the state for the next 20 years;

(iii) assess the state's ability to minimize waste and recycle;

(iv) evaluate solid waste treatment, disposal, and storage options, as well as solid waste needs and existing capacity;

(v) evaluate facility siting, design, and operation;

(vi) review funding alternatives for solid waste management; and

(vii) address other solid waste management concerns that the board finds appropriate for the preservation of the public health and the environment.

(c) The board shall consider the economic viability of solid waste management strategies prior to incorporating them into the plan and shall consider the needs of population centers.

(d) The board shall review and modify the comprehensive statewide solid waste management plan no less frequently than every five years.

(3) (a) The board shall determine the type of solid waste generated in the state and tonnage of solid waste disposed of in the state in developing the comprehensive statewide solid waste management plan.

(b) The board shall review and modify the inventory no less frequently than once every five years.

(4) Subject to the limitations contained in Subsection 19-6-102(18)(b), the board shall establish siting criteria for nonhazardous solid waste disposal facilities, including incinerators.

19-6-105. Rules of board.

(1) The board may make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

(a) establishing minimum standards for protection of human health and the environment, for the storage, collection, transport, recovery, treatment, and disposal of solid waste, including requirements for the approval of plans for the construction, extension, operation, and closure of solid waste disposal sites;

(b) identifying wastes which are determined to be hazardous, including wastes designated as hazardous under Sec. 3001 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C., Sec. 6921, et seq.;

(c) governing generators and transporters of hazardous wastes and owners and operators of hazardous waste treatment, storage, and disposal facilities, including requirements for keeping records, monitoring, submitting reports, and using a manifest, without treating high-volume wastes such as cement kiln dust, mining wastes, utility waste, gas and oil drilling muds, and oil production brines in a manner more stringent than they are treated under federal standards;

(d) requiring an owner or operator of a treatment, storage, or disposal facility that is subject to a plan approval under Section 19-6-108 or which received waste after July 26, 1982, to take appropriate corrective action or other response measures for releases of hazardous waste or hazardous waste constituents from the facility, including releases beyond the boundaries of the facility;

(e) specifying the terms and conditions under which the board shall approve, disapprove, revoke, or review hazardous wastes operation plans;

(f) governing public hearings and participation under this part;

- (g) establishing standards governing underground storage tanks, in accordance with Title 19, Chapter 6, Part 4, Underground Storage Tank Act;
 - (h) relating to the collection, transportation, processing, treatment, storage, and disposal of infectious waste in health facilities in accordance with the requirements of Section 19-6-106;
 - (i) defining closure plans as major or minor;
 - (j) defining modification plans as major or minor; and
 - (k) prohibiting refuse, offal, garbage, dead animals, decaying vegetable matter, or organic waste substance of any kind to be thrown, or remain upon or in any street, road, ditch, canal, gutter, public place, private premises, vacant lot, watercourse, lake, pond, spring, or well.
- (2) If any of the following are determined to be hazardous waste and are therefore subjected to the provisions of this part, the board shall, in the case of landfills or surface impoundments that receive the solid wastes, take into account the special characteristics of the wastes, the practical difficulties associated with applying requirements for other wastes to the wastes, and site specific characteristics, including the climate, geology, hydrology, and soil chemistry at the site, if the modified requirements assure protection of human health and the environment and are no more stringent than federal standards applicable to wastes:
- (a) solid waste from the extraction, beneficiation, or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium;
 - (b) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; and
 - (c) cement kiln dust waste.
- (3) The board shall establish criteria for siting commercial hazardous waste treatment, storage, and disposal facilities, including commercial hazardous waste incinerators. Those criteria shall apply to any facility or incinerator for which plan approval is required under Section 19-6-108.

19-6-106. Rulemaking authority and procedure.

- (1) Except as provided in Subsection (2), no rule which the board makes for the purpose of the state administering a program under the federal Resource Conservation and Recovery Act and, to the extent the board may have jurisdiction, under the federal Comprehensive Environmental Response, Compensation and Liability Act, or the federal Emergency Planning and Community Right to Know Act of 1986, may be more stringent than the corresponding federal regulations which address the same circumstances. In making the rules, the board may incorporate by reference corresponding federal regulations.
- (2) The board may make rules more stringent than corresponding federal regulations for the purposes described in Subsection (1), only if it makes a written finding after public comment and hearing and based on evidence in the record that corresponding federal regulations are not adequate to protect public health and the environment of the state. Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the conclusion.

19-6-107. Executive secretary -- Appointment -- Powers.

The executive secretary shall be appointed by the executive director with the approval of the board and shall serve under the administrative direction of the executive director. The executive secretary may:

- (1) develop programs for solid waste and hazardous waste management and control within the state;
- (2) advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this part;
- (3) employ full-time employees necessary to carry out this part;
- (4) as authorized by the board pursuant to the provisions of this part, authorize any employee or representative of the department to conduct inspections as permitted in this part;
- (5) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to solid waste and hazardous waste management and control necessary for the discharge of duties assigned under this part;
- (6) collect and disseminate information relating to solid waste and hazardous waste management control;
- (7) as authorized by the board pursuant to the provisions of this part, enforce rules made or revised by the board through the issuance of orders which may be subsequently amended or revoked by the board;
- (8) review plans, specifications or other data relative to solid waste and hazardous waste control systems or any part of the systems as provided in this part;
- (9) cooperate with any person in studies and research regarding solid waste and hazardous waste management and control;
- (10) represent the state with the specific concurrence of the executive director in all matters pertaining to interstate solid waste and hazardous waste management and control including, under the direction of the board, entering into interstate compacts and other similar agreements; and
- (11) as authorized by the board and subject to the provisions of this chapter, exercise all incidental powers necessary to carry out the purposes of this chapter.

19-6-108. New nonhazardous solid or hazardous waste operation plans for facility or site -- Administrative and legislative approval required -- Exemptions from legislative and gubernatorial approval -- Time periods for review --

Information required -- Other conditions -- Revocation of approval -- Periodic review.

- (1) For purposes of this section, the following items shall be treated as submission of a new operation plan:
- (a) the submission of a revised operation plan specifying a different geographic site than a previously submitted plan;
 - (b) an application for modification of a commercial hazardous waste incinerator if the construction or the modification would increase the hazardous waste incinerator capacity above the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in the operation plan application as of January 1, 1990, if no operation plan approval has been issued as of January 1, 1990;
 - (c) an application for modification of a commercial nonhazardous solid waste incinerator if the construction of the modification would cost 50% or more of the cost of construction of the original incinerator or the modification would result in an increase in the capacity or throughput of the incinerator of a cumulative total of 50% above the total capacity or throughput that was approved in the operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990; or
 - (d) an application for modification of a commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, other than an incinerator, if the modification would be outside the boundaries of the property owned or controlled by the applicant, as shown in the application or approved operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990.
- (2) Capacity under Subsection (1)(b) shall be calculated based on the throughput tonnage specified for the trial burn in the operation plan or the operation plan application if no operation plan approval has been issued as of January 1, 1990, and on annual operations of 7,000 hours.
- (3) (a) (i) No person may own, construct, modify, or operate any facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste without first submitting and receiving the approval of the executive secretary for an operation plan for that facility or site.
- (ii) (A) A permittee who is the current owner of a facility or site that is subject to an operation plan may submit to the executive secretary information, a report, a plan, or other request for approval for a proposed activity under an operation plan:
- (I) after obtaining the consent of any other permittee who is a current owner of the facility or site; and
 - (II) without obtaining the consent of any other permittee who is not a current owner of the facility or site.
- (B) The executive secretary may not:
- (I) withhold an approval of an operation plan requested by a permittee who is a current owner of the facility or site on the grounds that another permittee who is not a current owner of the facility or site has not consented to the request; or
 - (II) give an approval of an operation plan requested by a permittee who is not a current owner before receiving consent of the current owner of the facility or site.
- (b) (i) Except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, no person may own, construct, modify, or operate any commercial facility that accepts for treatment or disposal, with the intent to make a profit, any of the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and receiving the approval of the executive secretary for an operation plan for that facility site.
- (ii) Wastes referred to in Subsection (3)(b)(i) are:
- (A) fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;
 - (B) wastes from the extraction, beneficiation, and processing of ores and minerals; or
 - (C) cement kiln dust wastes.
- (c) (i) No person may construct any facility listed under Subsection (3)(c)(ii) until he receives, in addition to and subsequent to local government approval and subsequent to the approval required in Subsection (3)(a), approval by the governor and the Legislature.
- (ii) Facilities referred to in Subsection (3)(c)(i) are:
- (A) commercial nonhazardous solid or hazardous waste treatment or disposal facilities; and
 - (B) except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal, with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust wastes.
- (d) No person need obtain gubernatorial or legislative approval for the construction of a hazardous waste facility for which an operating plan has been approved by or submitted for approval to the executive secretary under this section before April 24, 1989, and which has been determined, on or before December 31, 1990, by the executive secretary to be complete, in accordance with state and federal requirements for operating plans for hazardous waste facilities even if a different geographic site is subsequently submitted.
- (e) No person need obtain gubernatorial and legislative approval for the construction of a commercial nonhazardous solid waste disposal facility for which an operation plan has been approved by or submitted for approval to the executive secretary under this section on or before January 1, 1990, and which, on or before December 31, 1990, the executive secretary determines to be complete, in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.
- (f) Any person owning or operating a facility or site on or before November 19, 1980, who has given timely

notification as required by Section 3010 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has submitted a proposed hazardous waste plan under this section for that facility or site, may continue to operate that facility or site without violating this section until the plan is approved or disapproved under this section.

(g) (i) The executive secretary shall suspend acceptance of further applications for a commercial nonhazardous solid or hazardous waste facility upon a finding that he cannot adequately oversee existing and additional facilities for permit compliance, monitoring, and enforcement.

(ii) The executive secretary shall report any suspension to the Natural Resources, Agriculture, and Environment Interim Committee.

(4) The executive secretary shall review each proposed nonhazardous solid or hazardous waste operation plan to determine whether that plan complies with the provisions of this part and the applicable rules of the board.

(5) (a) If the facility is a class I or class II facility, the executive secretary shall approve or disapprove that plan within 270 days from the date it is submitted.

(b) Within 60 days after receipt of the plans, specifications, or other information required by this section for a class I or II facility, the executive secretary shall determine whether the plan is complete and contains all information necessary to process the plan for approval.

(c) (i) If the plan for a class I or II facility is determined to be complete, the executive secretary shall issue a notice of completeness.

(ii) If the plan is determined by the executive secretary to be incomplete, he shall issue a notice of deficiency, listing the additional information to be provided by the owner or operator to complete the plan.

(d) The executive secretary shall review information submitted in response to a notice of deficiency within 30 days after receipt.

(e) The following time periods may not be included in the 270 day plan review period for a class I or II facility:

(i) time awaiting response from the owner or operator to requests for information issued by the executive secretary;

(ii) time required for public participation and hearings for issuance of plan approvals; and

(iii) time for review of the permit by other federal or state government agencies.

(6) (a) If the facility is a class III or class IV facility, the executive secretary shall approve or disapprove that plan within 365 days from the date it is submitted.

(b) The following time periods may not be included in the 365 day review period:

(i) time awaiting response from the owner or operator to requests for information issued by the executive secretary;

(ii) time required for public participation and hearings for issuance of plan approvals; and

(iii) time for review of the permit by other federal or state government agencies.

(7) If, within 365 days after receipt of a modification plan or closure plan for any facility, the executive secretary determines that the proposed plan, or any part of it, will not comply with applicable rules, the executive secretary shall issue an order prohibiting any action under the proposed plan for modification or closure in whole or in part.

(8) Any person who owns or operates a facility or site required to have an approved hazardous waste operation plan under this section and who has pending a permit application before the United States Environmental Protection Agency shall be treated as having an approved plan until final administrative disposition of the permit application is made under this section, unless the board determines that final administrative disposition of the application has not been made because of the failure of the owner or operator to furnish any information requested, or the facility's interim status has terminated under Section 3005 (e) of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6925 (e).

(9) No proposed nonhazardous solid or hazardous waste operation plan may be approved unless it contains the information that the board requires, including:

(a) estimates of the composition, quantities, and concentrations of any hazardous waste identified under this part and the proposed treatment, storage, or disposal of it;

(b) evidence that the disposal of nonhazardous solid waste or treatment, storage, or disposal of hazardous waste will not be done in a manner that may cause or significantly contribute to an increase in mortality, an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment;

(c) consistent with the degree and duration of risks associated with the disposal of nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste, evidence of financial responsibility in whatever form and amount that the executive secretary determines is necessary to insure continuity of operation and that upon abandonment, cessation, or interruption of the operation of the facility or site, all reasonable measures consistent with the available knowledge will be taken to insure that the waste subsequent to being treated, stored, or disposed of at the site or facility will not present a hazard to the public or the environment;

(d) evidence that the personnel employed at the facility or site have education and training for the safe and adequate handling of nonhazardous solid or hazardous waste;

(e) plans, specifications, and other information that the executive secretary considers relevant to determine whether the proposed nonhazardous solid or hazardous waste operation plan will comply with this part and the rules of the board; and

(f) compliance schedules, where applicable, including schedules for corrective action or other response measures for releases from any solid waste management unit at the facility, regardless of the time the waste was placed in the unit.

(10) The executive secretary may not approve a commercial nonhazardous solid or hazardous waste operation plan that meets the requirements of Subsection (9) unless it contains the information required by the board, including:

- (a) evidence that the proposed commercial facility has a proven market of nonhazardous solid or hazardous waste, including:
 - (i) information on the source, quantity, and price charged for treating, storing, and disposing of potential nonhazardous solid or hazardous waste in the state and regionally;
 - (ii) a market analysis of the need for a commercial facility given existing and potential generation of nonhazardous solid or hazardous waste in the state and regionally; and
 - (iii) a review of other existing and proposed commercial nonhazardous solid or hazardous waste facilities regionally and nationally that would compete for the treatment, storage, or disposal of the nonhazardous solid or hazardous waste;
 - (b) a description of the public benefits of the proposed facility, including:
 - (i) the need in the state for the additional capacity for the management of nonhazardous solid or hazardous waste;
 - (ii) the energy and resources recoverable by the proposed facility;
 - (iii) the reduction of nonhazardous solid or hazardous waste management methods, which are less suitable for the environment, that would be made possible by the proposed facility; and
 - (iv) whether any other available site or method for the management of hazardous waste would be less detrimental to the public health or safety or to the quality of the environment; and
 - (c) compliance history of an owner or operator of a proposed commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, which may be applied by the executive secretary in a nonhazardous solid or hazardous waste operation plan decision, including any plan conditions.
- (11) The executive secretary may not approve a commercial nonhazardous solid or hazardous waste facility operation plan unless based on the application, and in addition to the determination required in Subsections (9) and (10), the executive secretary determines that:
- (a) the probable beneficial environmental effect of the facility to the state outweighs the probable adverse environmental effect; and
 - (b) there is a need for the facility to serve industry within the state.
- (12) Approval of a nonhazardous solid or hazardous waste operation plan may be revoked, in whole or in part, if the person to whom approval of the plan has been given fails to comply with that plan.
- (13) The executive secretary shall review all approved nonhazardous solid and hazardous waste operation plans at least once every five years.
- (14) The provisions of Subsections (10) and (11) do not apply to hazardous waste facilities in existence or to applications filed or pending in the department prior to April 24, 1989, that are determined by the executive secretary on or before December 31, 1990, to be complete, in accordance with state and federal requirements applicable to operation plans for hazardous waste facilities.
- (15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous solid waste facility in existence or to an application filed or pending in the department prior to January 1, 1990, that is determined by the executive secretary, on or before December 31, 1990, to be complete in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.
- (16) Nonhazardous solid waste generated outside of this state that is defined as hazardous waste in the state where it is generated and which is received for disposal in this state shall not be disposed of at a nonhazardous waste disposal facility owned and operated by local government or a facility under contract with a local government solely for disposal of nonhazardous solid waste generated within the boundaries of the local government, unless disposal is approved by the executive secretary.
- (17) This section may not be construed to exempt any facility from applicable regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through 2114.

19-6-108.3. Executive secretary to issue written assurances, make determinations, and partition operation plans -- Board to make rules.

- (1) Based upon risk to human health or the environment from potential exposure to hazardous waste, the executive secretary may:
- (a) even if corrective action is incomplete, issue an enforceable written assurance to a person acquiring an interest in real property covered by an operation plan that the person to whom the assurance is issued:
 - (i) is not a permittee under the operation plan; and
 - (ii) will not be subject to an enforcement action under this part for contamination that exists or for violations under this part that occurred before the person acquired the interest in the real property covered by the operation plan;
 - (b) determine that corrective action to the real property covered by the operation plan is:
 - (i) complete;
 - (ii) incomplete;
 - (iii) unnecessary with an environmental covenant; or
 - (iv) unnecessary without an environmental covenant; and
 - (c) partition from an operation plan a portion of real property subject to the operation plan after determining that corrective action for that portion of real property is:
 - (i) complete;
 - (ii) unnecessary with an environmental covenant; or

(iii) unnecessary without an environmental covenant.

(2) If the executive secretary determines that an environmental covenant is necessary under Subsection (1)(b) or (c), the executive secretary shall require that the real property be subject to an environmental covenant according to Title 57, Chapter 25, Uniform Environmental Covenants Act.

(3) An assurance issued under Subsection (1) protects the person to whom the assurance is issued from any cost recovery and contribution action under state law.

(4) By following the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, the board may adopt rules to administer this section.

19-6-108.5. Management of hazardous waste generated outside Utah.

(1) On and after July 1, 1992, any waste entering Utah for disposal or treatment, excluding incineration, that is classified by Utah as nonhazardous solid waste and by the state of origin as hazardous waste, and that exceeds the base volume provided in Subsection (2) for each receiving facility or site, shall be treated according to the same treatment standards to which it would have been subject had it remained in the state where it originated. However, if those standards are less protective of human health or the environment than the treatment standards applicable under Utah law, the waste shall be treated in compliance with the Utah standards.

(2) The base volume provided in Subsection (1) for each receiving facility or site is the average of the annual quantities of nonhazardous solid waste that originated outside Utah and were received by the facility or site in calendar years 1990 and 1991.

(3) (a) The base volume for each receiving facility or site that has an operating plan approved prior to July 1, 1992, but did not receive nonhazardous solid waste originating outside Utah during calendar years 1990 and 1991, shall be the average of annual quantities of out-of-state nonhazardous waste the facility or site received during the 24 months following the date of initial receipt of nonhazardous waste originating outside Utah.

(b) The base determined under Subsection (a) applies to the facility or site on and after July 1, 1995, regardless of the amount of nonhazardous waste originating outside Utah received by the facility or site prior to this date.

19-6-109. Inspections authorized.

Any duly authorized officer, employee, or representative of the board may, at any reasonable time and upon presentation of appropriate credentials, enter upon and inspect any property, premise, or place on or at which solid or hazardous wastes are generated, transported, stored, treated, or disposed of, and have access to and the right to copy any records relating to the wastes, for the purpose of ascertaining compliance with this part and the rules of the board. Those persons referred to in this section may also inspect any waste and obtain waste samples, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Any person obtaining samples shall give to the owner, operator, or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. If any analysis is made of those samples, a copy of the results of that analysis shall be furnished promptly to the owner, operator, or agent in charge.

19-6-111. Variances -- Requirements for application -- Procedure.

(1) (a) If the board determines that the application of, or compliance with, any requirements of this part would cause undue or unreasonable hardship to any person, it may issue a variance from any of those requirements.

(b) No variance may be granted except upon application for it.

(c) Immediately upon receipt of an application for a variance, the board shall give public notice of the application and provide an opportunity for a public hearing.

(d) A variance granted for more than one year shall contain a timetable for coming into compliance with this part and shall be conditioned on adherence to that timetable.

(2) (a) Any variance granted under this section may be renewed on terms and conditions and for periods which would be appropriate for the initial granting of a variance.

(b) No renewal may be granted except on application for it.

(c) Immediately upon receipt of an application for renewal, the board shall give public notice of the application and provide an opportunity for a public hearing.

(3) (a) The board may review any variance during the term for which it was granted.

(b) The procedure for review is the same as that for an original application and the variance previously granted may be revoked upon a finding that the conditions and the terms upon which the variance was granted are not being met.

(4) (a) Any variance or renewal exists at the discretion of the board and is not a right of the applicant or holder.

(b) However, any person adversely affected by the granting, denying, or revoking of any variance or renewal by the board may obtain judicial review of the board's decision by filing a petition in district court within 30 days from the date of notification of the decision.

(c) The decision of the board may not be overturned upon review unless the court finds that the actions of the board were arbitrary or capricious.

19-6-112. Notice of violations -- Order for correction -- Civil action to enforce.

(1) Whenever the board determines that any person is in violation of any applicable approved hazardous wastes operation plan or solid waste plan, the requirements of this part, or any of the board's rules, it may cause written notice of that violation to be served upon the alleged violator. The notice shall specify the provisions of the plan, this part or rule alleged to have been violated, and the facts alleged to constitute the violation.

(2) The board may:

(a) issue an order requiring that necessary corrective action be taken within a reasonable time; or
(b) request the attorney general or the county attorney in the county in which the violation is taking place to bring a civil action for injunctive relief and enforcement of this part.

(3) Pending promulgation of rules for corrective action under Section 19-6-105, the board may issue corrective action orders on a case-by-case basis, as necessary to carry out the purposes of this part.

19-6-113. Violations -- Penalties -- Reimbursement for expenses.

(1) As used in this section, "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.

(2) Any person who violates any order, plan, rule, or other requirement issued or adopted under this part is subject in a civil proceeding to a penalty of not more than \$13,000 per day for each day of violation.

(3) On or after July 1, 1990, no person shall knowingly:

(a) transport or cause to be transported any hazardous waste identified or listed under this part to a facility that does not have a hazardous waste operation plan or permit under this part or RCRA;

(b) treat, store, or dispose of any hazardous waste identified or listed under this part:

(i) without having obtained a hazardous waste operation plan or permit as required by this part or RCRA;

(ii) in knowing violation of any material condition or requirement of a hazardous waste operation plan or permit; or

(iii) in knowing violation of any material condition or requirement of any rules or regulations under this part or RCRA;

(c) omit material information or make any false material statement or representation in any application, label, manifest, record, report, permit, operation plan, or other document filed, maintained, or used for purposes of compliance with this part or RCRA or any rules or regulations made under this part or RCRA; and

(d) transport or cause to be transported without a manifest, any hazardous waste identified or listed under this part and required by rules or regulations made under this part or RCRA to be accompanied by a manifest.

(4) (a) (i) Any person who knowingly violates any provision of Subsection (3)(a) or (b) is guilty of a felony.

(ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of a felony under Subsection (3)(a) or (b) is subject to a fine of not more than \$50,000 for each day of violation, or imprisonment for a term not to exceed five years, or both.

(iii) If a person is convicted of a second or subsequent violation under Subsection (3)(a) or (b), the maximum punishment is double both the fine and the term of imprisonment authorized in Subsection (4)(a)(ii).

(b) (i) Any person who knowingly violates any of the provisions of Subsection (3)(c) or (d) is guilty of a felony.

(ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of a felony for a violation of Subsection (3)(c) or (d) is subject to a fine of not more than \$50,000 for each day of violation, or imprisonment for a term not to exceed two years, or both.

(iii) If a person is convicted of a second or subsequent violation under Subsection (3)(c) or (d), the maximum punishment is double both the fine and the imprisonment authorized in Subsection (4)(b)(ii).

(c) (i) Any person who knowingly transports, treats, stores, or disposes of any hazardous waste identified or listed under this part in violation of Subsection (3)(a), (b), (c), or (d), who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury is guilty of a felony.

(ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of a felony described in Subsection (4)(c)(i) is subject to a fine of not more than \$250,000 or imprisonment for a term not to exceed 15 years, or both.

(iii) A corporation, association, partnership, or governmental instrumentality, upon conviction of violating Subsection (4)(c)(i), is subject to a fine of not more than \$1,000,000.

(5) (a) Except as provided in Subsections (5)(b) and (c) and Section 19-6-722, all penalties assessed and collected under authority of this section shall be deposited in the General Fund.

(b) The department may reimburse itself and local governments from monies collected from civil penalties for qualifying extraordinary expenses incurred in qualifying environmental enforcement activities.

(c) Notwithstanding the provisions of Section 78-3-14.5, the department may reimburse itself and local governments from monies collected from criminal fines for qualifying extraordinary expenses incurred in prosecutions for violations of this part.

(d) The department shall regulate reimbursements by making rules that define:

(i) qualifying environmental enforcement activities; and

(ii) qualifying extraordinary expenses.

(6) Prosecution for criminal violations of this part may be commenced by the attorney general, the county attorney, or the district attorney as appropriate under Section 17-18-1 or 17-18-1.7 in any county where venue is proper.

19-6-114. Proof of service of notice, order, or other document.

Proof of service of any notice, order, or other document issued by, or under the authority of, the board may be made in the same manner as in the service of a summons in a civil action. Proof of service shall be filed with the board or may be made by forwarding a copy of that notice, order, or other document by registered mail, directed to the person at his last known address, with an affidavit to that effect being filed with the board.

19-6-115. Imminent danger to health or environment -- Authority of executive director to initiate action to restrain.

Notwithstanding any other provision of this part, upon receipt of evidence that the handling, transportation, treatment, storage, or disposal of any solid or hazardous waste, or a release from an underground storage tank, is presenting an imminent and substantial danger to health or the environment, the executive director may bring suit on behalf of this state in the district court to immediately restrain any person contributing, or who has contributed, to that action to stop the handling, storage, treatment, transportation, or disposal or to take other action as appropriate.

19-6-116. Application of part subject to state assumption of primary responsibility from federal government -- Authority of political subdivisions.

(1) The requirements of this part applicable to the generation, treatment, storage, or disposal of hazardous waste, and the rules adopted under this part, shall not take effect until this state is qualified to assume, and does assume, primacy from the federal government for the control of hazardous wastes.

(2) This part does not alter the authority of political subdivisions of the state to control solid and hazardous wastes within their local jurisdictions so long as any local laws, ordinances, or rules are not inconsistent with this part or the rules of the board.

19-6-117. Action against insurer or guarantor.

(1) The state may assert a cause of action directly against an insurer or guarantor of an owner or operator if:

(a) a cause of action exists against an owner or operator of a treatment, storage, or disposal facility, based upon conduct for which the board requires evidence of financial responsibility under Section 19-6-108, and that owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal Bankruptcy Code; or

(b) jurisdiction over an owner or operator, who is likely to be solvent at the time of judgment, cannot be obtained in state or federal court.

(2) In that action, the insurer or guarantor may assert all rights and defenses available to the owner or operator, in addition to rights and defenses that would be available to the insurer or guarantor in an action brought against him by the owner or operator.

19-6-117.5. Applicability of fees for treatment or disposal of waste.

Waste that is subject to more than one fee under Section 19-6-118, 19-6-118.5, or 19-6-119 is subject only to the highest applicable fee.

19-6-118. Hazardous waste and treated hazardous waste disposal fees.

(1) (a) An owner or operator of any commercial hazardous waste or mixed waste disposal or treatment facility that primarily receives hazardous or mixed wastes generated by off-site sources not owned, controlled, or operated by the facility or site owner or operator, and that is subject to the requirements of Section 19-6-108, shall pay the fee under Subsection (2).

(b) The owner or operator of each cement kiln, aggregate kiln, boiler, blender, or industrial furnace that receives for burning hazardous waste generated by off-site sources not owned, controlled, or operated by the owner or operator shall pay the fee under Subsection (2).

(2) (a) Through June 30, 2005, the owner or operator of each facility under Subsection (1) shall collect from the generators of hazardous waste and mixed waste a fee of \$28 per ton or fraction of a ton on all hazardous waste and mixed waste received at the facility or site for disposal, treatment, or both.

(b) On and after July 1, 2005, the owner or operator of each facility under Subsection (1) shall pay a fee of \$28 per ton on all hazardous waste and mixed waste received at the facility for disposal, treatment, or both.

(c) The fee required under Subsection (2)(b) shall be calculated by multiplying the total tonnage of waste, computed to the first decimal place, received during the calendar month by \$28.

(d) When hazardous waste or mixed waste is received at a facility for treatment or disposal and the fee required under this Subsection (2) is paid for that treatment or disposal, any subsequent treatment or disposal of the waste is not subject to additional fees under this Subsection (2).

(e) (i) On and after July 1, 1997 through June 30, 2003, and on and after April 1, 2004 through June 30, 2005, hazardous waste received at a land disposal facility is subject to a fee of \$14 per ton or fraction of a ton, rather than the \$28 fee under Subsection (2)(a), if the waste is treated so that it:

(A) meets the state treatment standards required for land disposal at the facility; or

(B) is no longer a hazardous waste at the time of disposal at that facility.

(ii) On and after July 1, 2003, through March 31, 2004, hazardous waste received at a land disposal facility for

treatment and disposal is subject to the \$28 fee imposed under Subsection (2)(a).

(f) (i) On and after July 1, 2005, hazardous waste received at a land disposal facility is subject to a fee of \$14 per ton if the waste is treated so that it:

- (A) meets the state treatment standards required for land disposal at the facility; or
- (B) is no longer a hazardous waste at the time of disposal at that facility.

(ii) The fee required under Subsection (2)(f)(i) shall be calculated by multiplying the tonnage of waste, computed to the first decimal place, received during the calendar month by \$14.

(g) (i) The department shall allocate at least 10% of the fees received from a facility under this section to the county in which the facility is located.

(ii) The county may use fees allocated under Subsections (2)(e) and (f) to carry out its hazardous waste monitoring and response programs.

(h) The department shall deposit the state portion of the fees received under this section into the restricted account created in Section 19-1-108.

(3) (a) The owner or operator shall pay the fees imposed under this section to the department on or before the 15th day of the month following the month in which the fee accrued.

(b) With the monthly fee, the owner or operator shall submit a completed form, as prescribed by the department, specifying information required by the department to verify the amount of waste received and the fee amount for which the owner or operator is liable.

(4) (a) The department shall oversee and monitor hazardous waste treatment, disposal, and incineration facilities, including federal government facilities located within the state.

(b) The department may determine facility oversight priorities.

(5) (a) The department, in preparing its budget for the governor and the Legislature, shall separately indicate the amount necessary to administer the hazardous waste program established by this part.

(b) The Legislature shall appropriate the costs of administering this program.

(6) The Office of Legislative Fiscal Analyst shall monitor the fees collected under this part.

(7) Mixed waste subject to a fee under this section is not subject to a fee under Section 19-3-106.

19-6-118.5. PCB disposal fee.

(1) The owner or operator of a waste facility shall pay a fee of \$4.75 per ton on all wastes containing polychlorinated biphenyls (PCBs) that are:

- (a) regulated under 15 U.S.C. 2605; and
- (b) received at the facility for disposal or treatment.

(2) The owner or operator of a facility receiving PCBs for disposal or treatment shall:

(a) calculate the fees imposed under Subsection (1) by multiplying the total tonnage of waste received during the calendar month, computed to the first decimal place, by the required fee rate of \$4.75 per ton;

(b) pay the fees imposed by this section to the department by the 15th day of the month following the month in which the fees accrued; and

(c) with the fees required under this section, submit to the department, on a form prescribed by the department, information that verifies the amount of waste received and the fees that the owner or operator is required to pay.

(3) The department shall deposit all fees received under this section into the Environmental Quality Restricted Account created in Section 19-1-108.

(4) The owner or operator of a waste facility that is subject to a fee under this section is not subject to a fee for the same waste under Section 19-3-106, even if the waste contains radioactive materials.

19-6-119. Nonhazardous solid waste disposal fees.

(1) (a) Except as provided in Subsection (5), the owner or operator of a commercial nonhazardous solid waste disposal facility or incinerator shall pay the following fees for waste received for treatment or disposal at the facility if the facility or incinerator is required to have operation plan approval under Section 19-6-108 and primarily receives waste generated by off-site sources not owned, controlled, or operated by the facility or site owner or operator:

(i) 13 cents per ton on all municipal waste and municipal incinerator ash;

(ii) 50 cents per ton on the following wastes if the facility disposes of one or more of the following wastes in a cell exclusively designated for the waste being disposed:

(A) construction waste or demolition waste;

(B) yard waste, including vegetative matter resulting from landscaping, land maintenance, and land clearing operations;

(C) dead animals;

(D) waste tires and materials derived from waste tires disposed of in accordance with Title 19, Chapter 6, Part 8, Waste Tire Recycling Act; and

(E) petroleum contaminated soils that are approved by the executive secretary; and

(iii) \$2.50 per ton on:

(A) all nonhazardous solid waste not described in Subsections (1)(a)(i) and (ii); and

(B) (I) fly ash waste;
 (II) bottom ash waste;
 (III) slag waste;
 (IV) flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;
 (V) waste from the extraction, beneficiation, and processing of ores and minerals; and
 (VI) cement kiln dust wastes.

(b) A commercial nonhazardous solid waste disposal facility or incinerator subject to the fees under Subsection (1)(a)(i) or (ii) is not subject to the fee under Subsection (1)(a)(iii) for those wastes described in Subsections (1)(a)(i) and (ii).

(c) The owner or operator of a facility described in Subsection 19-6-102(3)(b)(iii) shall pay a fee of 13 cents per ton on all municipal waste received for disposal at the facility.

(2) (a) Except as provided in Subsections (2)(b) and (5), a waste facility that is owned by a political subdivision shall pay the following annual facility fee to the department by January 15 of each year:

- (i) \$800 if the facility receives 5,000 or more but fewer than 10,000 tons of municipal waste each year;
- (ii) \$1,450 if the facility receives 10,000 or more but fewer than 20,000 tons of municipal waste each year;
- (iii) \$3,850 if the facility receives 20,000 or more but fewer than 50,000 tons of municipal waste each year;
- (iv) \$12,250 if the facility receives 50,000 or more but fewer than 100,000 tons of municipal waste each year;
- (v) \$14,700 if the facility receives 100,000 or more but fewer than 200,000 tons of municipal waste each year;
- (vi) \$33,000 if the facility receives 200,000 or more but fewer than 500,000 tons of municipal waste each year; and
- (vii) \$66,000 if the facility receives 500,000 or more tons of municipal waste each year.

(b) Except as provided in Subsection (5), a waste facility that is owned by a political subdivision shall pay \$2.50 per ton for:

- (i) nonhazardous solid waste that is not a waste described in Subsection (1)(a)(i) or (ii) received for disposal if the waste is:
 - (A) generated outside the boundaries of the political subdivision; and
 - (B) received from a single generator and exceeds 500 tons in a calendar year; and
 - (ii) waste described in Subsection (1)(a)(iii)(B) received for disposal if the waste is:
 - (A) generated outside the boundaries of the political subdivision; and
 - (B) received from a single generator and exceeds 500 tons in a calendar year.
- (c) Waste received at a facility owned by a political subdivision under Subsection (2)(b) may not be counted as part of the total tonnage received by the facility under Subsection (2)(a).

(3) (a) As used in this Subsection (3):

- (i) "Recycling center" means a facility that extracts valuable materials from a waste stream or transforms or remanufactures the material into a usable form that has demonstrated or potential market value.
- (ii) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility that is used to deposit collected solid waste from off-site into a transfer vehicle for transport to a solid waste handling or disposal facility.

(b) Except as provided in Subsection (5), the owner or operator of a transfer station or recycling center shall pay to the department the following fees on waste sent for disposal to a nonhazardous solid waste disposal or treatment facility that is not subject to a fee under this section:

- (i) \$1.25 per ton on:
 - (A) all nonhazardous solid waste; and
 - (B) waste described in Subsection (1)(a)(iii)(B);
- (ii) 10 cents per ton on all construction and demolition waste; and
- (iii) 5 cents per ton on all municipal waste or municipal incinerator ash.

(c) Wastes subject to fees under Subsection (3)(b)(ii) or (iii) are not subject to the fee required under Subsection (3)(b)(i).

(4) If a facility required to pay fees under this section receives nonhazardous solid waste for treatment or disposal, and the fee required under this section is paid for that treatment or disposal, any subsequent treatment or disposal of the waste is not subject to additional fees under this section.

(5) The owner or operator of a waste disposal facility that receives waste described in Subsection (1)(a)(iii)(B) is not required to pay any fee on those wastes if received solely for the purpose of recycling, reuse, or reprocessing.

(6) Except as provided in Subsection (2)(a), a facility required to pay fees under this section shall:

- (a) calculate the fees by multiplying the total tonnage of waste received during the calendar month, computed to the first decimal place, by the required fee rate;
- (b) pay the fees imposed by this section to the department by the 15th day of the month following the month in which the fees accrued; and
- (c) with the fees required under Subsection (6)(b), submit to the department, on a form prescribed by the department, information that verifies the amount of waste received and the fees that the owner or operator is required to pay.

(7) The department shall:

- (a) deposit all fees received under this section into the Environmental Quality Restricted Account created in Section 19-1-108; and
- (b) in preparing its budget for the governor and the Legislature, separately indicate the amount of the department's

budget necessary to administer the solid and hazardous waste program established by this part.

(8) The department may contract or agree with a county to assist in performing nonhazardous solid waste management activities, including agreements for:

- (a) the development of a solid waste management plan required under Section 17-15-23; and
- (b) pass-through of available funding.

(9) This section does not exempt any facility from applicable regulation under the Atomic Energy Act, 42 U.S.C. Sec. 2014 and 2021 through 2114.

19-6-120. New hazardous waste operation plans -- Designation of hazardous waste facilities -- Fees for filing and plan review.

(1) For purposes of this section, the following items shall be treated as submission of a new hazardous waste operation plan:

(a) the submission of a revised hazardous waste operation plan specifying a different geographic site than a previously submitted plan;

(b) an application for modification of a commercial hazardous waste incinerator if the construction or the modification would increase the commercial hazardous waste incinerator capacity above the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in the operation plan application as of January 1, 1990, if no operation plan approval has been issued as of January 1, 1990; or

(c) an application for modification of a commercial hazardous waste treatment, storage, or disposal facility, other than an incinerator, if the modification would be outside the boundaries of the property owned or controlled by the applicant, as shown in the application or approved operation plan as of January 1, 1990, or the initial approved operation plan if initial approval is subsequent to January 1, 1990.

(2) Capacity under Subsection (1)(b) shall be calculated based on the throughput tonnage specified for the trial burn in the operation plan or the operation plan application if no operation plan approval has been issued as of January 1, 1990, and on annual operations of 7,000 hours.

(3) (a) Hazardous waste facilities that are subject to payment of fees under this section or Section 19-1-201 for plan reviews under Section 19-6-108 shall be designated by the department as either class I, class II, class III, or class IV facilities.

(b) The department shall designate commercial hazardous waste facilities containing either landfills, surface impoundments, land treatment units, thermal treatment units, incinerators, or underground injection wells, which primarily receive wastes generated by off-site sources not owned, controlled, or operated by the facility owner or operator, as class I facilities.

(4) The maximum fee for filing and review of each class I facility operation plan is \$200,000, and is due and payable as follows:

(a) The owner or operator of a class I facility shall, at the time of filing for plan review, pay to the department the nonrefundable sum of \$50,000.

(b) Upon issuance by the executive secretary of a notice of completeness under Section 19-6-108, the owner or operator of the facility shall pay to the department an additional nonrefundable sum of \$50,000.

(c) The department shall bill the owner or operator of the facility for any additional actual costs of plan review, up to an additional \$100,000.

(5) (a) The department shall designate hazardous waste incinerators that primarily receive wastes generated by sources owned, controlled, or operated by the facility owner or operator as class II facilities.

(b) The maximum fee for filing and review of each class II facility operation plan is \$150,000, and shall be due and payable as follows:

(i) The owner or operator of a class II facility shall, at the time of filing for plan review under Section 19-6-108, pay to the department the nonrefundable sum of \$50,000.

(ii) The department shall bill the owner or operator of the facility for any additional actual costs of plan review, up to an additional \$100,000.

(6) (a) The department shall designate hazardous waste facilities containing either landfills, surface impoundments, land treatment units, thermal treatment units, or underground injection wells, that primarily receive wastes generated by sources owned, controlled, or operated by the facility owner or operator, as class III facilities.

(b) The maximum fee for filing and review of each class III facility operation plan is \$100,000 and is due and payable as follows:

(i) The owner or operator shall, at the time of filing for plan review, pay to the department the nonrefundable sum of \$1,000.

(ii) The department shall bill the owner or operator of each class III facility for actual costs of operation plan review, up to an additional \$99,000.

(7) (a) All other hazardous waste facilities are designated as class IV facilities.

(b) The maximum fee for filing and review of each class IV facility operation plan is \$50,000 and is due and payable as follows:

(i) The owner or operator shall, at the time of filing for plan review, pay to the department the nonrefundable sum of \$1,000.

(ii) The department shall bill the owner or operator of each class IV facility for actual costs of operation plan review, up to an additional \$49,000.

(8) (a) The maximum fee for filing and review of each major modification plan and major closure plan for a class I, class II, or class III facility is \$50,000 and is due and payable as follows:

(i) The owner or operator shall, at the time of filing for that review, pay to the department the nonrefundable sum of \$1,000.

(ii) The department shall bill the owner or operator of the hazardous waste facility for actual costs of the review, up to an additional \$49,000.

(b) The maximum fee for filing and review of each minor modification and minor closure plan for a class I, class II, or class III facility, and of any modification or closure plan for a class IV facility, is \$20,000, and is due and payable as follows:

(i) The owner or operator shall, at the time of filing for that review, pay to the department the nonrefundable sum of \$1,000.

(ii) The department shall bill the owner or operator of the hazardous waste facility for actual costs of review up to an additional \$19,000.

(c) The owner or operator of a thermal treatment unit shall submit a trial or test burn schedule 90 days prior to any planned trial or test burn. At the time the schedule is submitted, the owner or operator shall pay to the department the nonrefundable fee of \$25,000. The department shall apply the fee to the costs of the review and processing of each trial or test burn plan, trial or test burn, and trial or test burn data report. The department shall bill the owner or operator of the facility for any additional actual costs of review and preparation.

(9) (a) The owner or operator of a class III facility may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class II facility operation plan.

(b) The owner or operator of a class IV facility may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class III facility operation plan.

(c) An owner or operator of a class I, class II, or class III facility who submits a major modification plan or a major closure plan may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class II facility operation plan.

(d) An owner or operator of a class I, class II, or class III facility who submits a minor modification plan or a minor closure plan, and an owner or operator of a class IV facility who submits a modification plan or a closure plan, may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class III facility operation plan.

(10) All fees received by the department under this section shall be deposited in the General Fund as dedicated credits for hazardous waste plan reviews in accordance with Subsection (12) and Section 19-6-108. All funding of the hazardous waste plan review program is nonlapsing.

(11) (a) (i) The executive secretary shall establish an accounting procedure that separately accounts for fees paid by each owner or operator who submits a hazardous waste operation plan for approval under Section 19-6-108 and pays fees for hazardous waste plan reviews under this section or Section 19-1-201.

(ii) The executive secretary shall credit all fees paid by the owner or operator to that owner or operator.

(iii) The executive secretary shall account for costs actually incurred in reviewing each operation plan and may only use the fees of each owner or operator for review of that owner or operator's plan.

(b) If the costs actually incurred by the department in reviewing a hazardous waste operation plan of any facility are less than the nonrefundable fee paid by the owner or operator under this section, the department may, upon approval or disapproval of the plan by the board or upon withdrawal of the plan by the owner or operator, use any remaining funds that have been credited to that owner or operator for the purposes of administering provisions of the hazardous waste programs and activities authorized by this part.

(12) (a) With regard to any review of a hazardous waste operation plan, modification plan, or closure plan that is pending on April 25, 1988 the executive secretary may assess fees for that plan review.

(b) The total amount of fees paid by an owner or operator of a hazardous waste facility whose plan review is affected by this subsection may not exceed the maximum fees allowable under this section for the appropriate class of facility.

(13) (a) The department shall maintain accurate records of its actual costs for each plan review under this section.

(b) Those records shall be available for public inspection.

19-6-121. Local zoning authority powers.

Nothing in this part prohibits any local zoning authority from adopting zoning criteria for commercial hazardous waste disposal facilities or sites that are more stringent than any requirements adopted by the department.

19-6-122. Facilities to meet local zoning requirements.

Notwithstanding any provisions of this part, persons seeking to operate a commercial hazardous waste disposal facility or site shall meet all local zoning requirements before beginning operations.

19-6-123. Kilns -- Siting.

A cement kiln or lightweight aggregate kiln may not accept hazardous waste for recycling or for use as fuel without

meeting the siting criteria for commercial hazardous waste treatment, storage, and disposal facilities established under Section 19-6-105.